In the High Court of Uttaranchal, at Nainital.
A.O. No. 849/2001
(Old No. 660/1999)

1- Smt. Paramjyoti alias Paramjeet
widow of Late Sikandar alias Sahdev.

2- Nand Lal minor son of Late Sikandar alias Sahdev

3- Km. Sunita minor daughter of Late Sikandar
Alias Sahdev

All R/o Village Tigari Bhudai, P.S. Kahtima
Tehsil Khatima, District Nainital
(Now Udham Singh Nagar) ---- Appellants.

Versus

New India Assurance Company, Pilibhit
Through Divisional Manager, Pilibhit ……. Respondent.

Sri S.C. Bhatt, Advocate for appellants.
Sri T.A. Khan, Advocate for the appellant.

Coram: Hon'ble P.C. Verma, J.
Hon'ble B.C. Kandpal, J.

Dated: 22-5-2006

This Appeal against Order, U/S 173 of the Motor Vehicles Act, 1988, has been preferred against the judgment and award dated 10-5-1999, passed by M.A.C.T./ V Addl. District Judge, Nainital in M.A.C.P. No. 392/1992 Smt. Paramjyoti @ Paramjeet and others Vs. Manjeet Singh and others, whereby the claimants were awarded Rs. 1,22,500/- as compensation along with 12% per annum interest from the date for the award, payable by the insurance company. The Tribunal also directed that the interim compensation awarded to the claimants shall also be adjusted in the above amount of compensation.

2- The brief facts for the case are that on 10-2-1992 at about 11 A.M. Sikandar riding in his motorcycle No. U.P. 25/0672 was returning his home and when he reached near village Amau, truck No. U.R.W. 735 came there rashly and negligently from Tanakpur, and dashed the motorcycle. Due to the accident Sikandar sustained grievous injuries and he was taken to P.H.C. Khatima where he succumbed to his injuries. According to the claimants the deceased.

Sikandar at the time of accident was 30 years of age and he was doing the business of food-grains from which he was earning Rs. 1,500/- per month. It was also alleged that the claimants were totally dependents on the deceased. They have claimed Rs. 4,00,000/- as compensation in lieu of death of Sikandar.

3- O.P. No.2, the insurer of the offending truck filed written statement and alleged that the accident had occurred due to rashness of the motorcyclist. It also alleged that the owner is put to strict proof of the facts that the offending truck was not being driven against the conditions of the insurance policy and the drive of the offending truck was having valid driving licence. It was also alleged that the driver of the offending truck was not made party to the petition, hence it is bad for non-joinder of party.

4- The owner of the offending truck, O.P.No.1 did not file any written statement. However he alleged that the offending truck was insured with the New India Assurance Company.

5- The Tribunal framed relevant issues. The claimant in support of their claim produced Smt. Paramjyoti, P.W.1, and Rajendra Kumar as P.W.2. During the pendency of claim petition the owner of the offending truck O.P.No.1 has died and his legal heirs were arrayed O.P. Nos. ½ to 1/3 but they did not adduce any evidence. O.P.No.2 Insurance Company also did not adduce any evidence.

6- The Tribunal having heard the learned counsel for the parties and perusing the evidence on record allowed the claim petition and directed the insurance company to pay Rs. 1,22,500/- along with 12% per annum interest from the date of award to the claimants. The Tribunal also directed that the interim compensation awarded U/S 140 of the Motor Vehicles Act shall also be adjusted in the compensation amount.

7- Feeling aggrieved the claimants have filed the present appeal for enhancement of the compensation amount.

8- Heard learned counsel for the parties and perused the record.

9- Learned counsel for the appellant/claimants has argued that the quantum of compensation awarded by the tribunal is against the weight of the evidence on record. It has also been submitted that the Tribunal has not properly assessed the evidence pertaining to the

income of the deceased.

10- The record reveals that the accident took place on account of the rash and negligent driving of the driver of truck No. URW 735. The evidence on record clearly establishes this aspect that the driver of the truck was rash and negligent and on account of the same the accident took place in which Sikandar sustained grievous injuries and he subsequently died on account of the same.

11- As far as the income of the deceased is concerned, it has been stated in the evidence that the deceased was earning Rs. 3,000/- per month from the trade of General Merchandise and labourer. It is worthy to mention here that in the claim petition the monthly income of the deceased has been shown as Rs. 1,500/- . No cogent and reliable evdidence has been adduced by the claimants in order to establish the exact income of the deceased. Any how in case if the evidence available on the record is taken into consideration then it can be safely inferred that the deceased was earning a sum of Rs. 1,500/- per month from his occupation. If this income is taken into consideration then the annual income of the deceased comes to Rs. 18,000/-. In case if 1/3rd amount is deducted from the aforesaid sum against the personal expenses of the deceased which he would have incurred, had be been survived, then the annual final dependency of the claimants comes to Rs. 12,000/-.

12- The age of the deceased was 30 years at the time of the accident and there is no evidence adduced by the opposite parties to show that the age of the deceased was more than 30 years, therefore, keeping in view the age of the deceased as well as his income a correct multiplier of 17 would be just and adequate in view of the Schedule given U/S 163-A of the Motor Vehicles. After calculation and adopting the aforesaid multiplier the total amount of compensation comes to Rs. 12000x 17 = Rs. 2,04,000/-.

13- The Tribunal has awarded an amount of Rs. 2500/- for cremation of the deceased as well as a sum of Rs. 5000/- for loss of love and affection and consortium to the claimants which does not require any interference.

14- On the basis of the aforesaid calculation the total amount of compensation to be awarded in favour of the claimant/appellants.

comes to Rs. 2,04,000/-+2,500/-+5,000/-=2,11,500/-.

15- As the offending vehicle in question was insured with the New India Assurance Company at the time of the accident, therefore, the insurer of the vehicle i.e. the New India Assurance Company the respondent is liable to pay the amount of compensation to the claimants. The rate of interest awarded by the Tribunal on the amount of compensation does not require any interference.

16- In view of the aforesaid discussion we come to the conclusion that this appeal is liable to be partly allowed and the judgment and award dated 10-5-1999 passed by MACT/ V Addl. District Judge, Nainital deserves to be modified upto the extent that the amount of compensation for Rs. 2,11,500/- is awarded in favour of the claimants instead of Rs. 1,22,500/- as has been awarded by the Tribunal.

17- Accordingly the appeal is partly allowed. The impugned judgment and award dated 10-5-1999 passed by MACT/ V Addl. District Judge, Nainital in MACP No. 392/1992 is modified upto the extent that the claimants/appellants are awarded compensation of Rs. 2,11,500/- instead of Rs. 1,22,500/- as has been awarded by the Tribunal.

(B.C. Kandpal, J.) **(P.C. Verma, J.)**

ISB